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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/973,512	10/09/2001	Toru Mineyama	09812.0172-00000	6341
22852	7590	06/27/2008		
FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER LLP 901 NEW YORK AVENUE, NW WASHINGTON, DC 20001-4413			EXAMINER VAN BRAMER, JOHN W	
			ART UNIT	PAPER NUMBER
			3622	
			MAIL DATE	DELIVERY MODE
			06/27/2008 PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/973,512

Applicant(s)

MINEYAMA ET AL.

Examiner

John Van Bramer

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 April 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 9 and 17-26 is/are pending in the application.
- 4a) Of the above claim(s) 18 and 21-26 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 9, 17, 19 and 20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 18 and 21-26 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/C)
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on April 9, 2008 has been entered.

Election/Restrictions

2. Newly submitted claims 18 and 21-26 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: Independent claims 1 and 9 are directed to tracking viewer tendencies for a first viewer and generating a programming guide and customer analysis information based upon this single viewer. Newly submitted claims 18 and 21-25 are directed towards a tracking tendencies of a group of individuals and generating a programming guide and customer analysis information based upon the tendencies of the group.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 18 and 21-26 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Response to Amendment

3. The amendment filed on April 9, 2008 cancelled no claims. Claims 1 and 9 were amended and new claims 17, 19 and 20 were added. Thus the currently pending claims are Claims 1, 9, 17, 19 and 20.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claim 19 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The specification does not disclose how one might determine what the first viewer absolutely wishes to view and how a group of programs meeting such a requirement can be obtained. In order to prosecute the claim, the examiner has interpreted the claim to mean a group of programs that have content similar to the first viewers viewing tendencies.

Claim Rejections - 35 USC § 103

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6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1, 9, 17, 19, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Remillard (U.S. Patent Number: 5,404,393) in view of Bull et al. (U.S. Patent Number: 5,995,943)

Claims 1, 9 and 17: Remillard discloses a server operational expenses collecting method, a server, a computer-readable medium comprising:

- a. Generating first viewer tendency information for a first viewer on the basis of a program viewing log, the program viewing log storing information about programs viewed by the first viewer on a terminal apparatus, The first viewer tendency information indicating the first viewer's tendency to view programs on the terminal apparatus. (Col 2, lines 6-24; Col 2, lines 44-62; Col 4, line 57 through Col 5, line 6; Col 5, line 55 through Col 6, line 21)
- b. Reorganizing a first electronic program guide into a second electronic programming guide tailored to the first viewer, the reorganizing being done in accordance with the first viewer tendency information. (Col 2, line 46 through Col 3, line 20; Col 5, line 55 through Col 6, line 21; and Col 7, lines 35-63)

- c. Generating customer analysis information based on the first viewer tendency information. (Col 2, line 46 through Col 3, line 20; Col 5, line 55 through Col 6, line 21; and Col 7, lines 35-63)
- d. Providing the customer analysis information to an advertiser who practices an advertising campaign using the terminal apparatus. (Col 6, lines 9-21)

While Remillard does not specifically state that it collects expenses in a predetermined amount for the provision of customer analysis information from the advertiser, the analogous art of Bull et al. (U.S. Patent Number: 5,995,943) teaches that it is well known to charge advertisers for providing them with such information (Col 5, line 59 through Col 6, line 19). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the customer analysis information to the advertiser for a fee. The rationale for doing so is that common sense dictates that the monitoring and gathering of such information is costly and that one would use commonly known methods for generating a revenue stream to help offset said cost since selling the gathered information to advertisers is one of a limited number of predictable methods for generating a revenue from the gathered information.

Claim 19: Remillard and Bull disclose the server operational expenses collecting method according to claim 1, wherein the second electronic programming guide includes a group of programs that are similar to the first viewer viewing tendencies.

(Remillard: Col 2, line 46 through Col 3, line 20; Col 5, line 55 through Col 6, line 21; and Col 7, lines 35-63)

Claim 20: Remillard and Bull disclose the server operational expenses collecting method according to claim 1 wherein the second electronic programming guide organizes programs into virtual channels. (Remillard: Col 2, line 46 through Col 3, line 20; Col 5, line 55 through Col 6, line 21; and Col 7, lines 35-63)

Response to Arguments

8. Applicant's arguments filed April 9, 2008 have been fully considered but they are not persuasive.

a. The applicant argues that the programming guide of Remillard is not based upon the viewing tendencies of the user, because the user is directly selecting desired services from among several services displayed in the menu. However, Remillard discloses in Col 2, lines 7-24 that viewing habits and user interaction are both monitored to develop a viewing profile. Remillard further discloses in Col 2, lines 43-62 and Col 4, lines 30-37 that these profiles are used to determine user preferences. These preferences are accessed when the system auto configures the menus available to the user. In Col 4, line 56 through Col 5, line 21, Remillard discloses connecting to a remote facility and displaying menus for allowing a user to interact with the remote facility on a television screen. These remote facilities are interactive and include specially designed

programming and conventional programming. The specially designed programming options include pay-per-view services (see Application number: 07/770,520 (now U.S. Patent Number: 5,396,546), Col 3, lines 18-33 which is incorporated by reference in Remillard, U.S. Patent Number: 5,404,393). A menu listing options from which a user can select pay-per-view programming to view is a programming guide. Thus, when Remillard discloses in Col 2, lines 43-62 that an initiation of a data call to a predetermined independent computer system to acquire configuration information and operating instruction including user preferences, he is disclosing creating a programming guide using the users viewing habit information.

b. The applicant argues that Remillard relies on users entering their desired services by operation of a remote keypad and attempts to differentiate this with the claimed first viewer tendency information that is generated on the basis of a program viewing log. However, the applicant overlooks the fact that the users viewing habits and interactions are monitored. The results of the monitoring are put into a profile (log) and menus are auto configured based on said profile information. (Col 2, lines 7-24 and Col 2, lines 43-62)

Conclusion

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Van Bramer whose telephone number is (571)

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272-8198. The examiner can normally be reached on 6am - 4pm Monday through Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eric Stamber can be reached on (571) 272-6724. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JV

/J. V./

Examiner, Art Unit 3622

/Eric W. Stamber/

Supervisory Patent Examiner, Art Unit 3622